

1 Stenson vigorously, but that he and Stenson disagreed on the theory of defense regarding alternative  
2 suspect evidence implicating Denise Hoerner. When Stenson requested substitute counsel, the court  
3 held a hearing and found that the dispute was over strategy, which did not warrant granting Stenson's  
4 request. The Supreme Court dismissed Stenson's claim that Leatherman was antagonistic to his  
5 motion to substitute counsel because "Stenson was continuously represented by one cocounsel not in  
6 an adversarial position to him [Neupert], and both counsel aided Stenson in preparing his motion for  
7 substitution." Id.

8 Stenson disputes the Supreme Court's conclusion that he was represented by cocounsel  
9 Neupert during the hearing on his motion because "Neupert fully concurred in Leatherman's position."  
10 (Pet. at 43). Stenson points out that Leatherman stated during the hearing that Neupert shared his  
11 opinion of the evidence and that Neupert did not advocate for Stenson to obtain new counsel.  
12 Stenson likewise disputes the Supreme Court's conclusion that both counsel aided him in preparing his  
13 motion for substitution because the record is clear that they were not acting as counsel when they did  
14 so. (Id.) To support further his position that Leatherman was antagonistic to his motion, he contends  
15 that Leatherman told the judge during the ex parte hearing that Stenson was guilty, was a liar, and was  
16 brain-damaged, and that Leatherman revealed confidential information to oppose the motion (e.g. the  
17 defense blood spatter expert's analysis and the results of Stenson's neuropsychological examination).  
18 He argues that Leatherman's antagonism was much more extreme than in either Wadsworth or  
19 Adelzo-Gonzalez, both of which required appointment of counsel for the hearing on a request for new  
20 counsel. In short, he disagrees with the Washington Supreme Court that Wadsworth is  
21 distinguishable.

22 Habeas relief is not warranted on this claim because the Washington Supreme Court's holding  
23 that Wadsworth is distinguishable was not objectively unreasonable. Notably, both Wadsworth and  
24 Adelzo-Gonzalez were direct appeals of federal court convictions, not habeas petitions of state court  
25 convictions (plus, Wadsworth was pre-AEDPA and Adelzo-Gonzalez was handed down after the

1 Washington Supreme Court ruled in Stenson I). Reasonable jurists could conclude that the facts here  
2 are not as egregious as Wadsworth. In Wadsworth, the fact that the attorney had stopped working to  
3 prepare for trial was indicative of the attorney's failure to act in the best interests of his client and the  
4 attorney's antagonistic stance towards the defendant's right to counsel. Here, as the Washington  
5 Supreme Court noted, the trial judge found that Leatherman was diligently representing Stenson's  
6 interests, notwithstanding their differences of opinion as to strategy and theory of defense.

7 At oral argument on Stenson's habeas petition, his counsel suggested that Stenson lacked  
8 diligent representation because of Leatherman's personal beliefs and attitudes towards Stenson, this  
9 case, and the death penalty. Diligent representation can only be measured by objective indications of  
10 counsel's performance. The Court can look only at what counsel does and cannot delve into counsel's  
11 personal attitudes or personal feelings. Counsel's personal beliefs or feelings has no place in this  
12 analysis; they are no measure of effective assistance.

13 V. Claim H: Violation of Right to Effective Assistance of Counsel at Trial

14 Stenson alleges that he received ineffective assistance of counsel because his counsel: 1) failed  
15 to present alternate suspect evidence implicating Denise Hoerner, 2) failed to present exculpatory  
16 evidence of the condition of Stenson's hands at the time of the murders, which Stenson maintains  
17 could have rebutted the state's inculpatory evidence concerning the condition of his hands, 3) was not  
18 prepared for testimony by Dr. Brady, the physician who performed the autopsy, that the shape of the  
19 wounds on Frank Hoerner's head conformed to Stenson's missing nunchukas weapons, and 4) failed  
20 to investigate and present evidence of the location of the missing nunchukas.

21 To succeed on an ineffective assistance of counsel claim, a petitioner must show 1) that his  
22 counsel's performance fell below an objective standard of reasonableness, and 2) that his counsel's  
23 deficient performance so prejudiced the petitioner that "there is a reasonable probability that, but for  
24 counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v.  
25 Washington, 466 U.S. 668, 694 (1984). The objective standard of reasonableness is gauged at the